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First Named Inventor	William K. Bodin
Art Unit	3627
Examiner Name	Fischer, Andrew J.
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ENCLOSURES (Check all that apply)

☐ Fee Transmittal Form
☐ Fee Attached
☐ Amendment/Reply
☐ After Final
☐ Affidavits/declaration(s)
☐ Extension of Time Request
☐ Express Abandonment Request
☐ Information Disclosure Statement
☐ Certified Copy of Priority Document(s)
☐ Response to Missing Parts/ Incomplete Application
☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

☐ Drawing(s)
☐ Licensing-related Papers
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☐ After Allowance communication to Technology Center (TC)
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Amended Appeal Brief (56 pages); 3 References (1 copy each); Postcard

Remarks

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Date	March 6, 2006

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Typed or printed name	Lee Ann Carter		
Signature	Lee Ann Carter	Date	March 6, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
William K. Bodin, *et al.*	§	Group Art Unit: 3627
	§	
Serial No.: 10/062,325	§	Examiner: Fischer, Andrew J.
	§	
Filed: January 31, 2002	§	Atty Docket No.: AUS920010855US1
	§	
Title: Inventory Controls with Radio	§	
Frequency Identification	§	
	§	

Mail Stop: Appeal Brief-Patents
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Alexandria, Virginia 22313-1450

AMENDED APPEAL BRIEF

Honorable Commissioner:

This is an Amended Appeal Brief filed pursuant to 37 CFR § 41.37 in response to the Notification of Non-Compliant Appeal Brief mailed on February 7, 2006. The original Appeal Brief, which this filing amends, was filed on December 27, 2005, pursuant to 37 CFR § 41.37 in response to the Final Office Action mailed on July 22, 2005 ("Final Office Action"), and pursuant to the Notice of Appeal filed October 24, 2005.

REAL PARTY IN INTEREST

The real party in interest in accordance with 37 CFR § 41.37(c)(1)(i) is the patent assignee, International Business Machines Corporation ("IBM"), a New York corporation having a place of business at Armonk, New York 10504.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences within the meaning of 37 CFR §
41.37(c)(1)(ii).

STATUS OF CLAIMS

Status of claims in accordance with 37 CFR § 41.37(c)(1)(iii): Thirty claims are filed in
the original application in this case. Claims 1-30 are rejected in the Final Office Action.
Claims 1-30 are on appeal.

STATUS OF AMENDMENTS

Status of amendments in accordance with 37 CFR § 41.37(c)(1)(iv): No amendments
were submitted after final rejection. The claims as currently presented are included in the
Appendix of Claims that accompanies this Appeal Brief.

SUMMARY OF CLAIMED SUBJECT MATTER

Applicants provide the following concise summary of the claimed subject matter
according to 37 CFR § 41.37(c)(1)(v), including references to the specification by page
and line number and to the drawings by reference characters. There is one independent
claim in the present case, claim 1. Claim 1 is a method claim. Claim 1 claims:

1.   A method of inventory control comprising the steps of:

        providing inventory item attributes comprising data elements in computer
        memory, wherein the inventory item attributes describe an inventory item,
        the inventory item has an RFID identification tag having an RFID
        identification tag code, and the inventory item attributes comprise:

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an RFID identification tag code field,

a control value,

an acceptable control value range, and

an out of range action;

detecting changes in the inventory item attributes, wherein detecting changes in inventory item attributes includes reading, through an RFID reader, the RFID identification code from the RFID tag associated with the inventory item;

recording detected changes in inventory item attributes;

comparing the control value and the acceptable control value range; and

taking action in dependence upon the result of the comparing and the out of range action.

The means plus function claim elements permitted by 35 U.S.C. § 112, sixth paragraph, for independent claim 11 are identified as follows. Note the precise correspondence with the elements of claims 1 and 21:

11.   A system of inventory control comprising:

means for **providing** inventory item attributes comprising data elements in computer memory, wherein the inventory item attributes describe an inventory item, the inventory item has an RFID identification tag having an RFID identification tag code, and the inventory item attributes comprise:

an RFID identification tag code field,

a control value,

an acceptable control value range, and

an out of range action;

means for **detecting** changes in the inventory item attributes, wherein means for detecting changes in inventory item attributes include means for reading, through an RFID reader, the RFID identification code from the RFID tag associated with the inventory item;

means for **recording** detected changes in inventory item attributes;

means for **comparing** the control value and the acceptable control value range; and

means for **taking action** in dependence upon the result of the comparing and the out of range action.

The means plus function claim elements permitted by 35 U.S.C. § 112, sixth paragraph, for independent claim 21 are identified as follows. Note the precise correspondence with the elements of claims 1 and 11:

21. A computer program product of inventory control comprising:

a recording medium;

means, recorded on the recording medium, for **providing** inventory item attributes comprising data elements in computer memory, wherein the inventory item attributes describe an inventory item, the inventory item has an RFID identification tag having an RFID identification tag code, and the inventory item attributes comprise:

an RFID identification tag code field,

a control value,

an acceptable control value range, and

an out of range action;

means, recorded on the recording medium, for **detecting** changes in the inventory item attributes, wherein means, recorded on the recording medium, for detecting changes in inventory item attributes include means for reading, through an RFID reader, the RFID identification code from the RFID tag associated with the inventory item;

means, recorded on the recording medium, for **recording** detected changes in inventory item attributes;

means, recorded on the recording medium, for **comparing** the control value and the acceptable control value range; and

means, recorded on the recording medium, for **taking action** in dependence upon the result of the comparing and the out of range action.

The portion of the original specification that is most pertinent to claim 1 of the present application is pages 15 – 16 and Figure 2. The subject matter of claim 1 is concisely summarized as follows with a description beginning at line 17 of page 15 in the original application and with reference numbers in parenthesis referencing Figure 2:

Turning now to Figure 2, a further embodiment of the invention is seen illustrated as a method of inventory control. Typical embodiments include providing (220) inventory item attributes (300) comprising data elements in computer memory, wherein the inventory item attributes describe an inventory item (117) and the inventory item has an RFID identification tag (114) having an RFID identification tag code (210).

Typically, the inventory item attributes include an RFID identification tag code field (306), a control value (308), an acceptable control value range (312), and an out of range action (314). Typical embodiments also include detecting changes (206) in the inventory item attributes, wherein detecting changes in inventory item attributes includes reading (208), through an RFID reader (110), the RFID identification code (210) from the RFID tag associated with the inventory item (117), and recording (222) detected changes in inventory item attributes.

Typical embodiments further include comparing (226) the control value (308) and the acceptable control value range (312), and taking action (216) in dependence upon the result of the comparing and the out of range action (314). In some embodiments, the steps of detecting changes (206), recording detected changes (222), comparing (226) the control value and the acceptable control value range, and taking action (216) are carried out through Java servlets (reference 109 on Figure 1) in at least one OSGI-compliant service bundle (108) installed and operating in an OSGI-compliant service gateway (106).

Because claims 11 and 21 contain elements parallel to claim 1, the concise summary above of claim 1 is applicable also to claims 11 and 21. The acts described in this concise summary above of the method of claim 1 are also the acts corresponding to each claimed function in the means plus functions claimed in claims 12 and 23 according to 35 U.S.C. § 112, sixth paragraph.

GROUNDS OF REJECTION

In accordance with 37 CFR § 41.37(c)(1)(vi), Applicants provide the following concise statement for each ground of rejection:

1. Whether claims 1-30 are unpatentable under 35 U.S.C § 112, second paragraph,

as indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

2. Whether claims 11-20 are unpatentable under 35 U.S.C § 102(e) over Reber, *et al.* (U.S. Patent No. 5,798,694).

3. Whether claims 1-30 are unpatentable under 35 U.S.C § 103(a) over Reber, *et al.* (U.S. Patent No. 5,798,694) in view of Well Known Prior Art.

ARGUMENT

Applicants present the following arguments pursuant to 37 CFR § 41.37(c)(1)(vii) regarding the two grounds of rejection in the present case.

Argument Regarding The First Ground Of Rejection: Whether Claims 1-30 Are Unpatentable Under 35 U.S.C § 112, Second Paragraph, As Indefinite For Failing To Particularly Point Out And Distinctly Claim The Subject Matter Which Applicants Regard As The Invention

Claims 1-30 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. The Final Office Action at paragraph 9 states:

    i. In claim 1, it is unclear if the "detecting changes" detects changes to the attribute definitions (as claimed) or changes in the 'values' of the attributes. In other words, what "changes" are being detected? Are there changes to the attribute definition or type of attribute, a value of the attribute, or some other change?

    ii. In claim 11 and 21, it is unclear what is the corresponding structure in the 'means for detecting changes....'' In particular, it is unclear which

hardware and/or software elements make up the "means for detecting changes...."

    iii. Also in claim 12, the term "OSGI" is indefinite. If Applicants expressly state on the record that such a term is old and well known in the art and Applicants provide appropriate evidence in support thereof, this particular 35 U.S.C. § 112, 2nd paragraph rejection will be withdrawn.

MPEP § 2173 sets forth the standard for compliance with 35 U.S.C. § 112 stating that "...the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent." *Manual of Patenting Examination Procedure* § 2173.02; *See Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). MPEP § 2173 further explains, "Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teaching of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made." *Manual of Patenting Examination Procedure* § 2173.02.

The examples specifically mentioned in paragraph 9 of the Final Office Action, claims 1, 11, 12, and 21, do in fact properly satisfy the definiteness requirement of 35 U.S.C. § 112, second paragraph, when analyzed in light of the factors from MPEP § 2173 above, including the Applicants' disclosure:

- The limitation "detecting changes" from claim 1 is definite in light of Applicants' disclosure, for example, at least at the following locations: in the specification beginning at line 23 of page 2, beginning at line 4 of page 17, referencing Figure 4, and beginning at line 19 of page 17, referencing Figure 5.

- The limitation "means for detecting changing" from claims 11 and 21 is definite in light of Applicants' disclosure, for example, at least at the following locations: in the specification beginning at line 7 of page 16, referencing Figures 1 and 2, beginning at line 24 of page 11, beginning at line 14 of page 11, referencing Figure 1, beginning at line 11 of page 7, and beginning at line 4 of page 17.

- The limitation "OSGI" from claim 12 is definite in light of Applicants' disclosure, for example, at least at the following locations: in the specification beginning at line 9 of page 12.

In view of the detailed descriptions in the specification, it is clear that the claim language is sufficiently definite to apprise one of ordinary skill in the art of its scope as required by 35 U.S.C. § 112, second paragraph. The Applicants therefore traverse the rejections individually to claims 1-30 under 35 U.S.C. § 112, second paragraph, and respectfully request the withdrawal of the rejections.

Argument Regarding The Second Ground Of Rejection: Whether Claims 11-20 Are Unpatentable Under 35 U.S.C § 102(E) Over Reber

Claims 11-20 stand rejected under 35 § U.S.C. § 102(e) as being anticipated by Reber, *et al.* (U.S. Patent No. 5,798,694). As discussed in further detail below, Applicants respectfully submit in response that the Final Office Action fails to provide the Applicants with information sufficient to judge the propriety of continuing prosecution as required by 35 U.S.C. § 132. In addition, the Final Office Action does not established anticipation by Reber because the Final Office Action does not even mention many of the elements of the Applicants' claims. Moreover, examining the substance of Reber confirms that Reber does not anticipate each and every element of the Applicants' claims in the present application. Finally, Reber does not inherently disclose any elements or limitations of Applicants' claims. For these reasons, the rejections should be withdrawn and the claims should be allowed.

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**The Final Office Action Fails To Provide The Applicants With
Information Sufficient To Judge The Propriety Of
Continuing Prosecution As Required By 35 U.S.C. § 132**

The Final Office Action at numbered paragraph 13 sets forth the following omnibus

rejection of most of the elements of claim 11 over Reber:

> Claims 11-20 are rejected under 35 U.S.C. §102(e) as being anticipated by
>
> Reber et. al. (U.S. 5,798,694)("Reber"). Reber discloses means for
>
> providing inventory item attributes comprising data attributes wherein the
>
> inventory item attributes describe an inventory item (the tag must have
>
> attributes to separate it from other tags; RFID identification tag 30 and
>
> code field (inherent), the RFID tag detects changes, records changes,
>
> compares control values with acceptable values, and takes action if those
>
> actions are outside a range...

The mere assertion that Reber anticipates claims 11-20 does not give the Applicants

adequate notification of the reasons for the rejection. 35 U.S.C. § 132 requires the

Examiner to notify the applicants of the reasons for the rejections, including "such

information and references as may be useful in judging of the propriety of continuing the

prosecution...." 37 C.F.R. § 1.104(c)(2) second sentence requires, "When a reference is

complex or shows or describes inventions other than that claimed by the applicant, the

particular part relied on must be designated as nearly as practicable." MPEP § 707

requires, when needed for compliance with 35 U.S.C. § 132, the inclusion in the Final

Office Action of "...the particular figures(s) of the drawing(s), and/or page(s) or

paragraph(s) of the reference(s)...." MPEP § 707.07(d) warns against such omnibus

rejections as made in the Final Office Action as, "...stereotyped and usually not

informative and should therefore be avoided." In this Final Office Action, the assertion

that Reber anticipates claims 11-20 of the present application is accompanied by no

explanation whatsoever of where in Reber the information relied on by the Examiner may

be found. Reber describes, among other things:

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- food storage apparatus

- a container for containing a food item

- a first electrical component associated with the container

- a second electrical component associated with the cover

- the first electrical component communicating with the second electrical component

- communication between electrical components when the cover seals the opening of the container

- the cover that includes a first at least one electrical contact and the container includes a second at least one electrical contact to provide an electrical coupling between the first electrical component and the second electrical component when the cover seals the opening of the container

- one of the first electrical component and the second electrical component includes a sensor, and another of the first electrical component and the second electrical component includes an indicator

- one of the first electrical component and the second electrical component includes at least one of a receiver, a transmitter, a processor, and a memory, and another of the first electrical component and the second electrical component includes an indicator

- one of the first electrical component and the second electrical component includes at least one of a receiver, a transmitter, a processor, and a memory.

- container sized for carrying by an individual

- container has a capacity less than or equal to 10 liters

- determining a first time at which the food item is removed from the storage place

- determining a second time at which the food item is returned to the storage place

- determining time duration that the food item is outside of a storage place

Reber is a complex reference containing information regarding many technical subjects and other inventions. In this circumstance, it is important for the Final Office Action to provide some indication of where in Reber the Examiner believes elements of Applicants' claims to be disclosed in order for Applicants to have enough information to judge how or whether to continue the prosecution of the present application. Moreover, in the absence of any indication of where within Reber the Examiner believes elements of Applicants' claims to be disclosed or suggested, Applicants cannot understand the reasons for the rejections. For these reasons alone, the rejection of the claims 11-20 should be withdrawn, and the claims should be allowed.

**Final Office Action Has Not Established Anticipation
By Reber Because The Final Office Action Does Not
Even Mention Many Of The Elements Of The
Applicants' Claims**

In the absence of any indication of where in Reber the Examiner believes elements of Applicants' claims to be disclosed, Applicants are under no obligation to comment further regarding the rejections of claims under 35 U.S.C. § 102. Nevertheless, in an effort to move the case forward and without prejudice to their request that the rejections

should be withdrawn, Applicants point out with respect that the Final Office Action has not established anticipation by Reber because the Final Office Action does not even mention many of the elements of the Applicants' claims.

As stated in *Verdegaal Bros. v. Union Oil Co. of California*, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The rejected claims 11-20 contain the following elements and limitations:

- means for providing inventory item attributes comprising data elements in computer memory, wherein the inventory item attributes describe an inventory item, the inventory item has an RFID identification tag having an RFID identification tag code, and the inventory item attributes comprise:

    o an RFID identification tag code field,
    o a control value,
    o an acceptable control value range, and
    o an out of range action

- means for detecting changes in the inventory item attributes, wherein means for detecting changes in inventory item attributes include means for reading, through an RFID reader, the RFID identification code from the RFID tag associated with the inventory item

- means for recording detected changes in inventory item attributes

- means for comparing the control value and the acceptable control value range

- means for taking action in dependence upon the result of the comparing and the out of range action

- wherein the means for detecting changes, means for recording detected changes, means for comparing the control value and the acceptable control value range, and means for taking action are carried out through Java servlets in at least one OSGI-compliant service bundle installed and operating in an OSGI-compliant service gateway

- wherein the inventory item attributes further comprise a control value unit field set to 'pounds'

- wherein means for detecting changes includes means for reading the weight of the inventory item from a scale

- wherein means for recording detected changes comprises means for storing the weight of the inventory item in the control value

- wherein the inventory item attributes further comprise a control value unit field set to 'freshness'

- wherein means for detecting changes in the inventory attributes of the inventory item further comprises:

  o means for reading from a clock the time when the inventory item is removed from a refrigerator,

  o means for reading the temperature from a kitchen thermometer,

  o means for reading from the clock the time when the inventory item is returned to the refrigerator, and

- ○ means for calculating a freshness coefficient in dependence upon the time when removed, the time when returned, and the temperature

- wherein means for recording detected changes comprises means for storing the freshness coefficient in the control value

- wherein the inventory item attributes further comprise a control value unit field set to 'utilization'

- wherein means for detecting changes in the inventory attributes of the inventory item includes means for detecting that the inventory item has been removed from and returned to an inventory storage location

- wherein means for recording detected changes comprises means for incrementing the control value, wherein the control value represents the number of times the inventory item has been utilized

- wherein the inventory item comprises a quantity of separate items

- wherein the inventory item attributes further comprise a control value unit field set to 'count'

- wherein means for detecting changes in the inventory attributes includes means for detecting that one of the separate items has been removed from inventory

- wherein means for recording detected changes comprises means for decrementing the control value, wherein the control value represents the quantity of separate items

- wherein the inventory item attributes further comprise:

  o a control value unit field set to 'days', and

  o an inventory date representing the date when the inventory item entered inventory

- wherein means for detecting changes comprises:

  o means for reading from a clock the current date, and

  o means for calculating the age of the inventory item in dependence upon the current date and the inventory date

- wherein means for recording detected changes comprises means for storing the age of the inventory item in the control value

- wherein means for taking action comprises means for emailing an order to a vendor to reorder the inventory item when the control value is outside the acceptable control value range

- wherein means for taking action comprises means for emailing a message to a user advising the user to discard the inventory item when the control value is outside the acceptable control value range

- wherein means for taking action comprises means for sending, through HTTP and through a vendor service gateway directly to a vendor's online order system, an HTML order for the inventory item when the control value is outside the acceptable control value range

As mentioned above, the Final Office Action at numbered paragraph 13, regarding Reber, states:

> Claims 11-20 are rejected under 35 U.S.C. §102(e) as being anticipated by Reber et. al. (U.S. 5,798,694)("Reber"). Reber discloses means for providing inventory item attributes comprising data attributes wherein the inventory item attributes describe an inventory item (the tag must have attributes to separate it from other tags; RFID identification tag 30 and code field (inherent), the RFID tag detects changes, records changes, compares control values with acceptable values, and takes action if those actions are outside a range...

In response, Applicants note that the Final Office Action only states that Reber discloses the following claim limitations:

- means for providing inventory item attributes

- wherein the inventory item attributes describe an inventory item

- an RFID identification tag

- RFID identification tag code field

- the RFID tag detects changes

- records changes

- compares control values with acceptable values

- takes action if those actions are outside a range

That is, the Final Office Action only appears to direct Reber to claim 11 of the present application. The Final Office Action, however, makes no mention whatsoever of any of the following limitations and elements as required by the Federal Circuit in *Verdegaal Bros.*:

- ... comprising data elements in computer memory, ..., the inventory item has an ... having an RFID identification tag code, and the inventory item attributes comprise:

  - ...
  - a control value,
  - an acceptable control value range, and
  - an out of range action

- means for ... in the inventory item attributes, wherein means for detecting changes in inventory item attributes include means for reading, through an RFID reader, the RFID identification code from the ... associated with the inventory item

- means for ... detected ... in inventory item attributes

- means for ... and ... control ... range

- means for ...

- wherein the means for detecting changes, means for recording detected changes, means for comparing the control value and the acceptable control value range, and means for taking action are carried out through Java servlets in at least one OSGI-compliant service bundle installed and operating in an OSGI-compliant service gateway

- wherein the inventory item attributes further comprise a control value unit field set to 'pounds'

- wherein means for detecting changes includes means for reading the weight of the inventory item from a scale

- wherein means for recording detected changes comprises means for storing the weight of the inventory item in the control value

- wherein the inventory item attributes further comprise a control value unit field set to 'freshness'

- wherein means for detecting changes in the inventory attributes of the inventory item further comprises:

  o means for reading from a clock the time when the inventory item is removed from a refrigerator,

  o means for reading the temperature from a kitchen thermometer,

  o means for reading from the clock the time when the inventory item is returned to the refrigerator, and

  o means for calculating a freshness coefficient in dependence upon the time when removed, the time when returned, and the temperature

- wherein means for recording detected changes comprises means for storing the freshness coefficient in the control value

- wherein the inventory item attributes further comprise a control value unit field set to 'utilization'

- wherein means for detecting changes in the inventory attributes of the inventory item includes means for detecting that the inventory item has been removed from and returned to an inventory storage location

- wherein means for recording detected changes comprises means for incrementing the control value, wherein the control value represents the number of times the inventory item has been utilized

- wherein the inventory item comprises a quantity of separate items

- wherein the inventory item attributes further comprise a control value unit field set to 'count'

- wherein means for detecting changes in the inventory attributes includes means for detecting that one of the separate items has been removed from inventory

- wherein means for recording detected changes comprises means for decrementing the control value, wherein the control value represents the quantity of separate items

- wherein the inventory item attributes further comprise:

  o a control value unit field set to 'days', and

  o an inventory date representing the date when the inventory item entered inventory

- wherein means for detecting changes comprises:

  o means for reading from a clock the current date, and

  o means for calculating the age of the inventory item in dependence upon the current date and the inventory date

- wherein means for recording detected changes comprises means for storing the age of the inventory item in the control value

- wherein means for taking action comprises means for emailing an order to a vendor to reorder the inventory item when the control value is outside the acceptable control value range

- wherein means for taking action comprises means for emailing a message to a user advising the user to discard the inventory item when the control value is outside the acceptable control value range

- wherein means for taking action comprises means for sending, through HTTP and through a vendor service gateway directly to a vendor's online order system, an HTML order for the inventory item when the control value is outside the acceptable control value range

Though the Final Office Action rejects claims 11-20 as anticipated by Reber, the Final Office Action only cites a few phrases from claim 11 of the present application to support the rejection under 35 U.S.C. § 102(e). The remaining elements and limitations of claim 11 are not even mentioned. In addition, the Final Office Action does not mention any of the additional elements claimed in dependent claims 12-20 as being anticipated by Reber. Because the Final Office Action does not mention all of the elements and limitations of claims 11-20, the rejections under 35 U.S.C. § 102(e) should be withdrawn, and claims 11-20 should be allowed.

Examination Of Reber Confirms That Reber Does Not Anticipate Each And Every Element As Set Forth In The Applicants' Claims

In the absence of any indication of where in Reber the Examiner believes elements of Applicants' claims to be disclosed, Applicants are under no obligation to comment further regarding the rejections of claims under 35 U.S.C. §102. Nevertheless, in an effort to move the case forward and without prejudice to their request that the rejections should be withdrawn, Applicants undertake to make their best guess regarding the meaning of the Final Office Action and respond below as best they can under the circumstances.

To anticipate claims 11-20 under 35 U.S.C. § 102(b), two basic requirements must be met. As stated in *Verdegaal Bros. v. Union Oil Co. of California*, the first requirement of anticipation is that Reber must disclose each and every element as set forth in Applicants' claims. *Verdegaal Bros.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The second requirement of anticipation from *In re Hoeksema* is that Reber must enable Applicants' claims. *In re Hoeksema*, 399 F.2d 269, 273, 158 USPQ 596, 600 (CCPA 1968). Reber does not meet either requirement and therefore does not anticipate Applicants' claims.

As mentioned above, the Final Office Action at numbered paragraph 13, regarding Reber, states:

> Claims 11-20 are rejected under 35 U.S.C. §102(e) as being anticipated by Reber et. al. (U.S. 5,798,694)("Reber"). Reber discloses means for providing inventory item attributes comprising data attributes wherein the inventory item attributes describe an inventory item (the tag must have attributes to separate it from other tags; RFID identification tag 30 and code field (inherent), the RFID tag detects changes; records changes,

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compares control values with acceptable values, and takes action if those actions are outside a range...

What Reber in fact discloses is a "Food Storage Apparatus And Methods And Systems For Monitoring A Food Item." Reber, *et al.* (U.S. Patent No. 5,798,694), Title Block (54). The principal purpose of Reber is described in column 10, lines 58-60, stating:

> Because the various embodiments of the present invention provide communication of signals between a cover and a container, they provide a significant improvement in that various functions provided by a food storage apparatus can be distributed therein. Additionally, the various embodiments of the present invention as herein-described monitor a condition of a food item to alert an individual of a discard condition of a food item requiring refrigeration.

In fact, the overall message of Reber is that of a food storage apparatus capable of indicating when a food item should be discarded. For further examples of Reber's disclosure and enablement of a food storage apparatus and a method of monitoring a food item, please consider the following excerpts:

- The system includes a food storage apparatus 22 for containing the food item 20 and a storage place 24 for storing the food storage apparatus 22. (column 2, lines 14-18).

- The food storage apparatus 22 includes a container 26 for containing the food item 20. (column 2, lines 19-20).

- Optionally, the food storage apparatus 22 includes a cover 28 to cover the opening of the container 26. (column 2, lines 25-26).

- The container 26 and the cover 28 can be suited for storing and dispensing perishable food items, dry food items, liquid food items, or any combination thereof. (column 2, lines 44-46).

- The food storage apparatus 22 includes an electronic tag 30 ... to monitor at least one condition of the food item 20. (column 3, lines 23-28).

- The indicator 36 can provide an alert or a warning of the condition of the food item 20. (column 3, lines 64-65).

- As with the indicator 36, the indicator 40 can provide either an audible indication or a visual indication of a condition of the food item 20.... (column 4, lines 5-8).

- In a preferred embodiment, the indication is utilized to alert an individual of a condition in which a food item requiring refrigeration should be discarded. (column 4, lines 28-31).

Reber discloses and enables a food storage apparatus and a method of monitoring a food item having little or nothing to do with a system of inventory control as claimed in the present application. As further evidence of the lack of disclosure and enablement in Reber regarding a system of inventory control as claimed in the present application, please note that not one of the following terms or phrases from claims 11-20 of the present application occurs anywhere in Reber, not even once:

- inventory item attributes
- computer memory
- inventory item
- RFID identification tag
- RFID identification tag code field
- control value

- acceptable control value range

- out of range action

- detecting changes

- RFID reader

- recording

- comparing the control value

- taking action

- Java

- OSGI

- gateway

- pounds

- reading the weight

- weight

- scale

- clock

- thermometer

- freshness coefficient

- utilization

- inventory storage location

- quantity

- separate items

- count

- days

- date

- entered inventory

- calculating the age

- storing the age

- emailing

- order

- vendor

- reorder the inventory item
- advising the user

In these circumstances there is no sound basis for believing that Reber in any way discloses or enables elements of claims 11-20 in the present application. Reber discloses a food storage apparatus and method for monitoring a food item, while the present application claims a system of inventory control. Reber also never once mentions many of the words in Applicants' claims 11-20. The Final Office Action therefore does not establish anticipation under 35 U.S.C. § 102(e) using Reber. The rejection of the claims 11-20 should be withdrawn, and the claims should be allowed.

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**Reber Does Not Inherently Establish Elements
And Limitations of Applicants' Claims**

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The Final Office Action at numbered paragraph 13, regarding Reber, states:

> Reber discloses an RFID inventory system with RFID identification tag
> code field (inherent)...

That is, the Final Office Action, by parenthetically inserting the term 'inherent' in a description of a claim element, apparently intends to invoke the theory of inherency as a basis for rejection of claim 11 in the present case. The Final Office Action at numbered paragraph 30 offers the only explanation of why or how an element of claim 11 may be considered inherently disclosed in Reber stating:

> The Examiner maintains his position on inherency. It is the Examiner's
> factual determination that the natural flowing result of the functions of tag
> 30 in Reber discloses a tag code field and attributes. This is reasonable
> because the tags need to be differentiated. If a tag does not have a tag
> code field with attributes, the system would be unable to recognize one tag
> from another. Moreover, because conventional RF tags contain *e.g.* UPC

information, they have attributes.

That is, the Final Office Action asserts that "an RFID identification tag code field" and "inventory item attributes" are inherently disclosed in Reber. In response, Applicants note that "[t]o establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

In asserting that "an RFID identification tag code field" and "inventory item attributes" are inherently disclosed in Reber, the Final Office Action does not provide extrinsic evidence that makes clear that "an RFID identification tag code field" and "inventory item attributes" are necessarily present in Reber's food storage apparatus and methods and systems for monitoring a food item. Regarding the "an RFID identification tag code field," the Final Office Action merely asserts: "This is reasonable because the tags need to be differentiated. If a tag does not have a tag code field with attributes, the system would be unable to recognize one tag from another." The Final Office Action, however, assumes a given set of circumstances where recognizing one tag from another is an objective of the system utilizing the RFID tags. All systems utilizing RFID tags do not, however, have such an objective. Consider, for example, a system that counts each time an item passes by a checkpoint during a given time period using an RFID tag attached to each item. The system is not concerned with differentiating RFID tags; the system is only concerned with counting each time the RFID tag passes by the checkpoint.

Regarding "inventory item attributes," the Final Office Action merely asserts that "because conventional RF tags contain *e.g.* UPC information, they have attributes." The Final Office Action, however, assumes a given set of circumstances where an RFID tag contains "*e.g.* UPC information." Continuing with the example system that counting each time an RFID tag passes by a checkpoint, such a system would have not need to

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incorporate any attribute information regarding the item passing by the checkpoint. The Final Office Action therefore attempts to establish inherency by the fact that certain RFID tags may contain "an RFID identification tag code field" and "inventory item attributes" based on a given set of circumstances. Because the Final Office Action states that "an RFID identification tag code field" and "inventory item attributes" are inherently disclosed in Reber as a result of a given set of circumstances, the Final Office Action has not properly established inherency. Applicants therefore maintain their traversal of the rejections under 35 U.S.C. § 102 and respectfully request the withdrawal of the rejections.

Conclusion Regarding The Second Ground Of Rejection

In rejecting claims 11-20 under 35 U.S.C. § 102(b) as being anticipated by Reber, the Final Office Action does not satisfy the legal requirements for rejections under 35 U.S.C. § 102(e). The Final Office Action fails to provide Applicants with information sufficient to judge the propriety of continuing prosecution as required by 35 U.S.C. § 132 and therefore relieves Applicants of any duty to respond to the rejection. In a best effort to be fully responsive, however, Applicants explained above that the Final Office Action has not established anticipation by Reber because the Final Office Action does not even mention many of the elements of the Applicants' claims. Even examining Reber itself confirms that Reber does not anticipate each and every element of the Applicants' claims, expressly or inherently. Applicants therefore traverse the rejection to each of claims 11-20 in the present application. The rejections of all claims 11-20 under 35 U.S.C. § 102, therefore, should be withdrawn, and the claims should be allowed.

Argument Regarding The Third Ground Of Rejection: Whether Claims 1-30 Are Unpatentable Under 35 U.S.C § 103(A) Over Reber In View Of Well Known Prior Art

Claims 11-20 stand rejected under 35 U.S.C § 103(a) as unpatentable over Reber in view of prior art that "would have been obvious to a person having ordinary skill in the art at the time the invention was made...." Applicants understand the Examiner's reference to

'ordinary skill' to be a reference to 'Well Known Prior Art.' Applicants respectfully submit in response that the Final Office Action fails to provide the Applicants with information sufficient to judge the propriety of continuing prosecution. In addition, Applicants note that the Final Office Action cannot rely on Well Known Prior Art to support the obviousness rejection. Applicants also note in response that the Final Office Action does not establish a prima facie case for obviousness. The proposed combination of Reber and Well Known Prior Art cited does not teach each and every element of the claims of the present application, and there is no suggestion or motivation to combine Reber and Well Known Prior Art cited. For all these reasons, the rejections should be withdrawn and the claims should be allowed.

The Final Office Action Fails To Provide The Applicants With Information Sufficient To Judge The Propriety Of Continuing Prosecution As Required By 35 U.S.C. § 132

As noted above, 35 U.S.C. § 132 requires the Examiner to notify the applicants of the reasons for a rejections, including "such information and references as may be useful in judging of the propriety of continuing the prosecution...." 37 C.F.R. § 1.104(c)(2) second sentence requires, "When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable." MPEP § 707 requires, when needed for compliance with 35 U.S.C. § 132, the inclusion in the Final Office Action of "...the particular figures(s) of the drawing(s), and/or page(s) or paragraph(s) of the reference(s)...." MPEP § 707.07(d) warns against omnibus rejections as, "...stereotyped and usually not informative and should therefore be avoided."

As mentioned above, the reference to Reber in the Final Office Action makes no mention of where in Reber the information relied on by the Examiner may be found. Regarding Well Known Prior Art, the Final Office Action at paragraphs 41 and 42 generally states:

...the Examiner finds that Nathan J. Muller's <u>Desktop Encyclopedia of the</u>
<u>Internet,</u> ("Desktop Encyclopedia") is additional evidence of what is basic
knowledge or common sense to one of ordinary skill in this art.

...the Examiner finds that the Borland's <u>Paradox for Windows User's</u>
<u>Guide</u> is additional evidence of what is basic knowledge or common sense
to one of ordinary skill in this art.

The Final Office Action, however, makes no mention of where in such Well Known Prior
Art references the information relied on by the Examiner may be found.

The only Well Known Prior Art reference cited by the Examiner with any specificity that
would be useful in judging of the propriety of continuing the prosecution is Friedman, *et
al.* (U.S. Patent 6,593,845) ('Friedman'). The Final Office Action at paragraph 16 states:

It is the Examiner's position that 'out-of-range' indicators in RF tag
devices is old and well known in the art. Evidence to support this includes
but is not limited to Friedman et. al. (U.S. 6,593,845 B1) column 5, lines
64-67.

Friedman at column 5, lines 64-67, however, states:

the main tag circuitry 48 can provide the field-off signal if the RF field at
the antenna 16 drops below the threshold for a certain period of time, such
as indicating that the interrogator has moved out of range.

Friedman's RF tag having an 'out-of-range' indicator provides a signal when a device,
referred to in Friedman as an 'interrogator,' travels out of range from the RF tag. The
system of inventory control as claimed in the present application does not claim an RF
tag having an 'out-of-range' indicator that provides a signal when an interrogator travels
out of range from the RF tag. Friedman's RF tag having an 'out-of-range' indicator

therefore is not a system for inventory control as claimed in the present application. The Final Office Action's reference to Friedman therefore does not establish that the Well Known Prior Art teaches Applicants' claims.

Because Friedman as cited in the Final Office Action has nothing to do with Applicant's claims, the Final Office Action remains completely silent regarding the location of the information relied on by the Examiner as to claims 11-20 other than generally citing Reber and the Well Known Prior Art composed of the <u>Desktop Encyclopedia of the Internet</u> and the <u>Paradox for Windows User's Guide</u>. Both Reber and the Well Known Prior Art are complex references containing information regarding many technical subjects and other inventions. In light of the requirements of 35 U.S.C. § 132, it is important for the Examiner to provide some indication of where in Reber and Well Known Prior Art the Examiner believes elements of Applicants' claims to be disclosed or suggested in order for Applicants to have enough information to judge how or whether to continue the prosecution of the present application. Moreover, in the absence of any indication of where within Reber and the Well Known Prior Art the Examiner believes elements of Applicants' claims to be disclosed or suggested, Applicants cannot understand the reasons for the rejections.

For these reasons alone, the rejection of the claims 11-20 should be withdrawn, and the claims should be allowed. Nevertheless, in an effort to move the case forward and without prejudice to their request that the rejections should be withdrawn, Applicants undertake to make their best guess regarding the meaning of the Final Office Action and respond below as best they can under the circumstances.

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**The Final Office Action Cannot Rely On Well Known
Prior Art To Support The Obviousness Rejection**

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In the absence of any indication of where in Reber and Well Known Prior Art the Examiner believes elements of Applicants' claims to be disclosed, Applicants are under no obligation to comment further regarding the rejections of claims under 35 U.S.C. §103. Nevertheless, in an effort to move the case forward and without prejudice to their

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request that the rejections should be withdrawn, Applicants undertake to make their best guess regarding the meaning of the Final Office Action and respond below as best they can under the circumstances.

In rejecting claims 11-20 for obviousness under 35 U.S.C. § 103, the Final Office Action at numbered paragraph 15 states:

> ...it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Reber to expressly indicate an RFID identification tag code field. Such a modification would have made it clear that RFID tags require unique ID numbers in order to properly identify the tag.

As stated above, the 'ordinary skill' so described is taken in this Response as 'Well Known Prior Art.' Applicants understand, based on this language from the Final Office Action, that this rejection, based on 'ordinary skill' so described, is a rejection relying on common knowledge or Well Known Prior Art according to MPEP 2144.03. Applicants respectfully propose, however, that "to modify Reber to expressly indicate an RFID identification tag code field" is not available to the Examiner in this case as Well Known Prior Art.

According to MPEP § 2144.03, the Examiner may use as Well Known Prior Art facts outside the record only if such facts are capable of instant and unquestionable demonstration as being well-known in the art. Well Known Prior Art, however, may not be substituted for facts which cannot be instantly and unquestionably demonstrated. As indicated in *In re Lee*, the examiner's finding of whether there is a teaching, motivation or suggestion to combine the teachings of the applied reference must not be resolved based on "subjective belief and unknown authority," but must be "based on objective evidence of record." *In re Lee*, 277 F.3d 1338, 1343-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002). The court in *Lee* requires evidence for the determination of unpatentability by clarifying that "common knowledge and common sense," as

mentioned in *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969), may only be applied to analysis of the evidence, rather than be a substitute for evidence. *In re Lee*, 277 F.3d at 1345, 61 USPQ2D at 1435.

In this case, Applicants note with respect that the Examiner has made a mere naked assertion that a fact is well known in the prior art with absolutely no "objective evidence of record" and no expression of any reason why one having ordinary skill in the pertinent art would have been led to modify the prior art to arrive at the claimed invention. As mentioned, Well Known Prior Art may not be substituted for facts which cannot be instantly and unquestionably demonstrated. The assertion in the Final Office Action that "it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Reber to expressly indicate an RFID identification tag code field" cannot be instantly and unquestionably demonstrated. For these reasons, the Final Office Action cannot rely on the assertion that such a modification is taught in the Well Known Prior Art to support the obviousness rejection. This rejection therefore fails to establish a prima facie case of obviousness. Claims 11-20 are patentable and should be allowed.

Reber and Well Known Prior Art Do Not Establish A Prima Facie Case For Obviousness

In the absence of any indication of where in Reber and Well Known Prior Art the Examiner believes elements of Applicants' claims to be disclosed, Applicants are under no obligation to comment further regarding the rejections of claims under 35 U.S.C. §103. Nevertheless, in an effort to move the case forward and without prejudice to their request that the rejections should be withdrawn, Applicants undertake to make their best guess regarding the meaning of the Final Office Action and respond below as best they can under the circumstances.

To establish a prima facie case of obviousness, three basic criteria must be met in accordance with MPEP § 2142. The first element of a prima facie case of obviousness under 35 U.S.C. § 103 is that the proposed combination of the references must teach or suggest all of Applicants' claim limitations. *In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974). The second element of a prima facie case of obviousness under 35 U.S.C. § 103 is that there must be a suggestion or motivation to combine the references. *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). The third element of a prima facie case of obviousness under 35 U.S.C. § 103 is that there must be a reasonable expectation of success in the proposed combination of the references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986).

The Combination Of Reber and Well Known Prior Art Does Not Teach All Of Applicants' Claim Limitation

To establish a prima facie case of obviousness under 35 U.S.C. § 103, the proposed combination of the references must teach or suggest all of Applicants' claim limitations. *In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974). In rejecting claims 11-20 under 35 U.S.C. § 103, the Final Office Action relies exclusively on Reber for disclosure or suggestion of several of the elements of claim 11. Final Office Action at numbered paragraph 15. As shown above, Reber does not disclose those elements relied

on by the Final Office Action. The combination of Reber and Well Known Prior Art therefore cannot teach or suggest all of the Applicants' claim limitations. For these reasons, the proposed combination of Reber and Well Known Prior Art does not establish a prima facie case of obviousness. Dependent claims 12-20 depend from independent claim 11. These dependent claims include each and every limitation of the independent claim from which they depend. These dependent claims stand because independent claim 11 stands. The rejections of all claims 11-20 under 35 U.S.C. § 103, therefore, should be withdrawn. Applicants respectfully traverse the rejection to each of claims 11-20 and request claims 11-20 be allowed.

No Suggestion or Motivation to Combine Reber And The Well Known Prior Art

To establish a prima facie case of obviousness, there must be a suggestion or motivation to modify Reber. *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). The suggestion or motivation to modify Reber must come from the teaching of the cited art itself, and the Examiner must explicitly point to the teaching within the cited art suggesting the proposed modification. Absent such a showing, the Examiner has impermissibly used "hindsight" occasioned by Applicants' own teaching to reject the claims. *In re Surko,* 11 F.3d 887, 42 U.S.P.Q.2d 1476 (Fed. Cir. 1997); *In re Vaeck,* 947 F.2d 488m 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re Gorman,* 933 F.2d 982, 986, 18 U.S.P.Q.2d 1885, 1888 (Fed. Cir. 1991); *In re Bond,* 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); *In re Laskowski,* 871 F,.2d 115, 117, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989).

In this case, the Final Office Action makes no mention whatsoever of any evidence of suggestion or motivation to modify Reber, neither in Reber itself nor in Well Known Prior Art. Because the Final Office Action does not explicitly point a teaching within the cited art that suggests or motivates the combination of Reber and Well Known Prior Art, the Final Office Action does not establish a prima facie case of obviousness. For this

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reason, the rejection of claims 11-20 should be withdrawn, and claims 11-20 should be allowed.

Conclusion Regarding The Third Ground Of Rejection

In rejecting claims 11-20 as unpatentable over Reber in view of prior art that "would have been obvious to a person having ordinary skill in the art at the time the invention was made...," the Final Office Action does not satisfy the legal requirements for a rejection under 35 U.S.C § 103(a). As explained above, the Final Office Action fails to provide the Applicants with information sufficient to judge the propriety of continuing prosecution. In addition, the Final Office Action cannot rely on Well Known Prior Art to support the obviousness rejection. The Final Office Action also does not establish a prima facie case for obviousness because the proposed combination of Reber and Well Known Prior Art does not teach each and every element of the claims of the present application, and there is no suggestion or motivation to combine Reber and Well Known Prior Art cited. For all these reasons, the rejections of claims 11-20 should be withdrawn and the claims should be allowed. Claims 1-10 and 21-30 claim method and computer program product aspects respectively of the systems claimed in claims 11-20, a relationship acknowledged in the Final Office Action at numbered paragraph 17. Because claims 11-20 stand, claims 1-10 and 21-30 also stand. Applicants therefore respectfully traverse each rejection individually of claims 1-30 in the present application because these claims are patentable and should be allowed.

Conclusion of Applicants' Arguments

Claims 1-30 stand rejected under 35 U.S.C § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. For the reasons set forth above, claims 1-30 are sufficiently definite to apprise one of ordinary skill in the art of its scope as required by 35 U.S.C. § 112, second paragraph. Applicants therefore traverse the rejections individually to claims 1-30 under 35 U.S.C. § 112, second paragraph, and respectfully

request the withdrawal of the rejections.

Claims 11-20 stand rejected under 35 U.S.C § 102(e) over Reber, *et al.* (U.S. Patent No. 5,798,694). For the reasons set forth above, Reber does not anticipate claims 11-20. Applicants therefore traverse the rejections individually to claims 11-20 under 35 U.S.C § 102(e) and respectfully request the withdrawal of the rejections.

Claims 1-30 stand rejected under 35 U.S.C § 103(a) over Reber, *et al.* (U.S. Patent No. 5,798,694) in view of Well Known Prior Art. For the reasons set forth above, the proposed combination of Reber and Well Known Prior Art does not establish a prima facie case of obviousness. Applicants therefore traverse the rejections individually to claims 1-30 under 35 U.S.C § 103(a) and respectfully request the withdrawal of the rejections.

In view of the forgoing arguments, reversal on all grounds of rejection is requested.

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Respectfully submitted,

Date: __March 6, 2006__   By:_____

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**APPENDIX OF CLAIMS
ON APPEAL IN PATENT APPLICATION OF
WILLIAM K. BODIN, *ET AL.*, SERIAL NO. 10/062,325**

CLAIMS

What is claimed is:

1.   A method of inventory control comprising the steps of:

providing inventory item attributes comprising data elements in computer

memory, wherein the inventory item attributes describe an inventory item, the

inventory item has an RFID identification tag having an RFID identification tag

code, and the inventory item attributes comprise:

an RFID identification tag code field,

a control value,

an acceptable control value range, and

an out of range action;

detecting changes in the inventory item attributes, wherein detecting changes in

inventory item attributes includes reading, through an RFID reader, the RFID

identification code from the RFID tag associated with the inventory item;

recording detected changes in inventory item attributes;

comparing the control value and the acceptable control value range; and

taking action in dependence upon the result of the comparing and the out of range action.

2. The method of claim 1 wherein the steps of detecting changes, recording detected changes, comparing the control value and the acceptable control value range, and taking action are carried out through Java servlets in at least one OSGI-compliant service bundle installed and operating in an OSGI-compliant service gateway.

3. The method of claim 1 wherein:

the inventory item attributes further comprise a control value unit field set to 'pounds';

detecting changes includes reading the weight of the inventory item from a scale; and

recording detected changes comprises storing the weight of the inventory item in the control value.

4. The method of claim 1 wherein:

the inventory item attributes further comprise a control value unit field set to 'freshness';

detecting changes in the inventory attributes of the inventory item further comprises:

reading from a clock the time when the inventory item is removed from a refrigerator,

reading the temperature from a kitchen thermometer,

reading from the clock the time when the inventory item is returned to the refrigerator, and

calculating a freshness coefficient in dependence upon the time when removed, the time when returned, and the temperature; and

recording detected changes comprises storing the freshness coefficient in the control value.

5.   The method of claim 1 wherein:

the inventory item attributes further comprise a control value unit field set to 'utilization';

detecting changes in the inventory attributes of the inventory item includes detecting that the inventory item has been removed from and returned to an inventory storage location; and

recording detected changes comprises incrementing the control value, wherein the control value represents the number of times the inventory item has been utilized.

6.   The method of claim 1 wherein:

the inventory item comprises a quantity of separate items;

the inventory item attributes further comprise a control value unit field set to 'count';

detecting changes in the inventory attributes includes detecting that one of the separate items has been removed from inventory; and

recording detected changes comprises decrementing the control value, wherein the control value represents the quantity of separate items.

7.   The method of claim 1 wherein:

the inventory item attributes further comprise:

a control value unit field set to 'days', and

an inventory date representing the date when the inventory item entered

inventory;

detecting changes comprises:

reading from a clock the current date, and

calculating the age of the inventory item in dependence upon the current

date and the inventory date; and

recording detected changes comprises storing the age of the inventory item in the

control value.

8.   The method of claim 1 wherein taking action comprises emailing an order to a

vendor to reorder the inventory item when the control value is outside the

acceptable control value range.

9.   The method of claim 1 wherein taking action comprises emailing a message to a

user advising the user to discard the inventory item when the control value is

outside the acceptable control value range.

10.   The method of claim 1 wherein taking action comprises sending, through HTTP

and through a vendor service gateway directly to a vendor's online order system,

an HTML order for the inventory item when the control value is outside the

acceptable control value range.

11.   A system of inventory control comprising:

means for providing inventory item attributes comprising data elements in

computer memory, wherein the inventory item attributes describe an inventory

item, the inventory item has an RFID identification tag having an RFID

identification tag code, and the inventory item attributes comprise:

an RFID identification tag code field,

a control value,

an acceptable control value range, and

an out of range action;

means for detecting changes in the inventory item attributes, wherein means for

detecting changes in inventory item attributes include means for reading, through

an RFID reader, the RFID identification code from the RFID tag associated with

the inventory item;

means for recording detected changes in inventory item attributes;

means for comparing the control value and the acceptable control value range; and

means for taking action in dependence upon the result of the comparing and the out of range action.

12. The system of claim 11 wherein the means for detecting changes, means for recording detected changes, means for comparing the control value and the acceptable control value range, and means for taking action are carried out through Java servlets in at least one OSGI-compliant service bundle installed and operating in an OSGI-compliant service gateway.

13. The system of claim 11 wherein:

the inventory item attributes further comprise a control value unit field set to 'pounds';

means for detecting changes includes means for reading the weight of the inventory item from a scale; and

means for recording detected changes comprises means for storing the weight of the inventory item in the control value.

14.   The system of claim 11 wherein:

the inventory item attributes further comprise a control value unit field set to 'freshness';

means for detecting changes in the inventory attributes of the inventory item further comprises:

        means for reading from a clock the time when the inventory item is
        removed from a refrigerator,

        means for reading the temperature from a kitchen thermometer,

        means for reading from the clock the time when the inventory item is
        returned to the refrigerator, and

        means for calculating a freshness coefficient in dependence upon the time
        when removed, the time when returned, and the temperature; and

means for recording detected changes comprises means for storing the freshness coefficient in the control value.

15. The system of claim 11 wherein:

the inventory item attributes further comprise a control value unit field set to 'utilization';

means for detecting changes in the inventory attributes of the inventory item includes means for detecting that the inventory item has been removed from and returned to an inventory storage location; and

means for recording detected changes comprises means for incrementing the control value, wherein the control value represents the number of times the inventory item has been utilized.

16. The system of claim 11 wherein:

the inventory item comprises a quantity of separate items;

the inventory item attributes further comprise a control value unit field set to 'count';

means for detecting changes in the inventory attributes includes means for

detecting that one of the separate items has been removed from inventory; and

means for recording detected changes comprises means for decrementing the

control value, wherein the control value represents the quantity of separate items.

17. The system of claim 11 wherein:

the inventory item attributes further comprise:

a control value unit field set to 'days', and

an inventory date representing the date when the inventory item entered

inventory;

means for detecting changes comprises:

means for reading from a clock the current date, and

means for calculating the age of the inventory item in dependence upon

the current date and the inventory date; and

means for recording detected changes comprises means for storing the age of the

inventory item in the control value.

18. The system of claim 11 wherein means for taking action comprises means for emailing an order to a vendor to reorder the inventory item when the control value is outside the acceptable control value range.

19. The system of claim 11 wherein means for taking action comprises means for emailing a message to a user advising the user to discard the inventory item when the control value is outside the acceptable control value range.

20. The system of claim 11 wherein means for taking action comprises means for sending, through HTTP and through a vendor service gateway directly to a vendor's online order system, an HTML order for the inventory item when the control value is outside the acceptable control value range.

21. A computer program product of inventory control comprising:

a recording medium;

means, recorded on the recording medium, for providing inventory item attributes comprising data elements in computer memory, wherein the inventory item attributes describe an inventory item, the inventory item has an RFID identification tag having an RFID identification tag code, and the inventory item attributes comprise:

an RFID identification tag code field,

a control value,

an acceptable control value range, and

an out of range action;

means, recorded on the recording medium, for detecting changes in the inventory item attributes, wherein means, recorded on the recording medium, for detecting changes in inventory item attributes include means for reading, through an RFID reader, the RFID identification code from the RFID tag associated with the inventory item;

means, recorded on the recording medium, for recording detected changes in inventory item attributes;

means, recorded on the recording medium, for comparing the control value and the acceptable control value range; and

means, recorded on the recording medium, for taking action in dependence upon the result of the comparing and the out of range action.

22. The computer program product of claim 21 wherein the means for detecting changes, means for recording detected changes, means for comparing the control value and the acceptable control value range, and means for taking action are

carried out through Java servlets in at least one OSGI-compliant service bundle installed and operating in an OSGI-compliant service gateway.

23. The computer program product of claim 21 wherein:

the inventory item attributes further comprise a control value unit field set to 'pounds';

means, recorded on the recording medium, for detecting changes includes means, recorded on the recording medium, for reading the weight of the inventory item from a scale; and

means, recorded on the recording medium, for recording detected changes comprises means, recorded on the recording medium, for storing the weight of the inventory item in the control value.

24. The computer program product of claim 21 wherein:

the inventory item attributes further comprise a control value unit field set to 'freshness';

means, recorded on the recording medium, for detecting changes in the inventory attributes of the inventory item further comprises:

means, recorded on the recording medium, for reading from a clock the time when the inventory item is removed from a refrigerator,

means, recorded on the recording medium, for reading the temperature from a kitchen thermometer,

means, recorded on the recording medium, for reading from the clock the time when the inventory item is returned to the refrigerator, and

means, recorded on the recording medium, for calculating a freshness coefficient in dependence upon the time when removed, the time when returned, and the temperature; and

means, recorded on the recording medium, for recording detected changes comprises means, recorded on the recording medium, for storing the freshness coefficient in the control value.

25.   The computer program product of claim 21 wherein:

the inventory item attributes further comprise a control value unit field set to 'utilization';

means, recorded on the recording medium, for detecting changes in the inventory

attributes of the inventory item includes means, recorded on the recording

medium, for detecting that the inventory item has been removed from and

returned to an inventory storage location; and

means, recorded on the recording medium, for recording detected changes

comprises means, recorded on the recording medium, for incrementing the control

value, wherein the control value represents the number of times the inventory

item has been utilized.

26.   The computer program product of claim 21 wherein:

the inventory item comprises a quantity of separate items;

the inventory item attributes further comprise a control value unit field set to

'count';

means, recorded on the recording medium, for detecting changes in the inventory

attributes includes means, recorded on the recording medium, for detecting that

one of the separate items has been removed from inventory; and

means, recorded on the recording medium, for recording detected changes comprises means, recorded on the recording medium, for decrementing the control value, wherein the control value represents the quantity of separate items.

27.   The computer program product of claim 21 wherein:

the inventory item attributes further comprise:

    a control value unit field set to 'days', and

    an inventory date representing the date when the inventory item entered inventory;

means, recorded on the recording medium, for detecting changes comprises:

    means, recorded on the recording medium, for reading from a clock the current date, and

    means, recorded on the recording medium, for calculating the age of the inventory item in dependence upon the current date and the inventory date; and

means, recorded on the recording medium, for recording detected changes comprises means, recorded on the recording medium, for storing the age of the inventory item in the control value.

28. The computer program product of claim 21 wherein means, recorded on the recording medium, for taking action comprises means, recorded on the recording medium, for emailing an order to a vendor to reorder the inventory item when the control value is outside the acceptable control value range.

29. The computer program product of claim 21 wherein means, recorded on the recording medium, for taking action comprises means, recorded on the recording medium, for emailing a message to a user advising the user to discard the inventory item when the control value is outside the acceptable control value range.

30. The computer program product of claim 21 wherein means, recorded on the recording medium, for taking action comprises means, recorded on the recording medium, for sending, through HTTP and through a vendor service gateway directly to a vendor's online order system, an HTML order for the inventory item when the control value is outside the acceptable control value range.

**APPENDIX OF EVIDENCE
ON APPEAL IN PATENT APPLICATION OF
WILLIAM K. BODIN, *ET AL.*, SERIAL NO. 10/062,325**

This is an evidence appendix in accordance with 37 CFR § 41.37(c)(1)(ix).

There is in this case no evidence submitted pursuant to 37 CFR §§ 1.130, 1.131, or 1.132, nor is there in this case any other evidence entered by the examiner and relied upon by the appellants.

RELATED PROCEEDINGS APPENDIX

This is a related proceedings appendix in accordance with 37 CFR § 41.37(c)(1)(x). There are no decisions rendered by a court or the Board in any proceeding identified pursuant to 37 CFR § 41.37(c)(1)(ii).